



## Legislative Council Staff

*Nonpartisan Services for Colorado's Legislature*

Room 029 State Capitol, Denver, CO 80203-1784

Phone: (303) 866-3521 • Fax: (303) 866-3855

[lcs.ga@state.co.us](mailto:lcs.ga@state.co.us) • [leg.colorado.gov/lcs](http://leg.colorado.gov/lcs)

## Memorandum

**THIS IS NOT A LEGAL OPINION**

October 11, 2022

**TO:** Interested Persons

**FROM:** Elizabeth Ramey, Principal Economist, 303-866-3522

**SUBJECT:** The TABOR Revenue Limit

### Summary

The Colorado Constitution limits the amount of revenue, from most sources, that the state government and local governments are permitted to retain and spend or save. Revenue collected in excess of the constitutional revenue limit, or TABOR limit, must be refunded to taxpayers unless voters authorize retention of the excess amount. This memorandum presents information on this constitutional requirement and its administration at the state level.

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### Article X, Section 20: TABOR

Colorado voters approved Amendment 1 at the 1992 General Election, adding Section 20 to Article X of the Colorado Constitution. This section is entitled the “Taxpayer’s Bill of Rights” and is commonly called “the TABOR Amendment,” or simply “TABOR.”

TABOR restricts the authority of state and local governments to make certain fiscal decisions. It requires state and local governments to obtain approval from voters in order to establish new taxes, raise tax rates, or issue multiyear bonded debt, and sets parameters for these elections. It also prohibits certain types of taxes, including a state property tax, local income taxes, and the taxation of income at different rates.

This memorandum focuses on a provision that frequently impacts state fiscal and budget decisions: Article X, Section 20 (7) of the Colorado Constitution, which establishes a limit on the amount of revenue that governments are permitted to retain and spend or save. This provision is commonly called the spending limit, revenue limit, or TABOR limit. Selected portions of subsections (1), (2), and (7) of Article X, Section 20, are provided in Appendix A beginning on page 15.

## **TABOR Subsection (7): The Revenue Limit**

Subsection (7) of Article X, Section 20, of the Colorado Constitution limits growth in “fiscal year spending” for all “districts,” including the state and all local governments. While the text in the constitution refers to spending, the provision acts as a limitation on the amount of revenue that the state or a local government is permitted to collect and spend *or save* each year. Revenue collected in excess of the limit may not be spent or saved and must be refunded to taxpayers.

*What does the constitution say?* The constitution limits growth in the amount of government revenue, from all sources not specifically exempted, that may be spent or saved. The allowable growth rate is equal to prior year inflation measured by the Denver-Aurora-Lakewood consumer price index plus the estimated prior year change in the state’s population.

The constitutional provisions related to the state limit are reproduced in the appendix.

*What sources of revenue are subject to the limit?* All district revenue is subject to the limit unless it meets one of 11 exemptions:

- revenue used for refunds to taxpayers;
- gifts;
- federal funds;
- collections for another government;
- pension contributions by employees;
- pension fund earnings;
- transfers or expenditures from reserves;
- damage awards;
- property sales;
- enterprise revenue; and
- voter-approved revenue changes.

The first nine of these are excluded from the definition of fiscal year spending. Enterprises are excluded from the definition of district, and so enterprise revenue is not accounted as being collected by the state or any local government. Voter-approved revenue changes are a component in the calculation of the annual revenue limit.

Table 1 presents state-level examples of each of the exemption types.

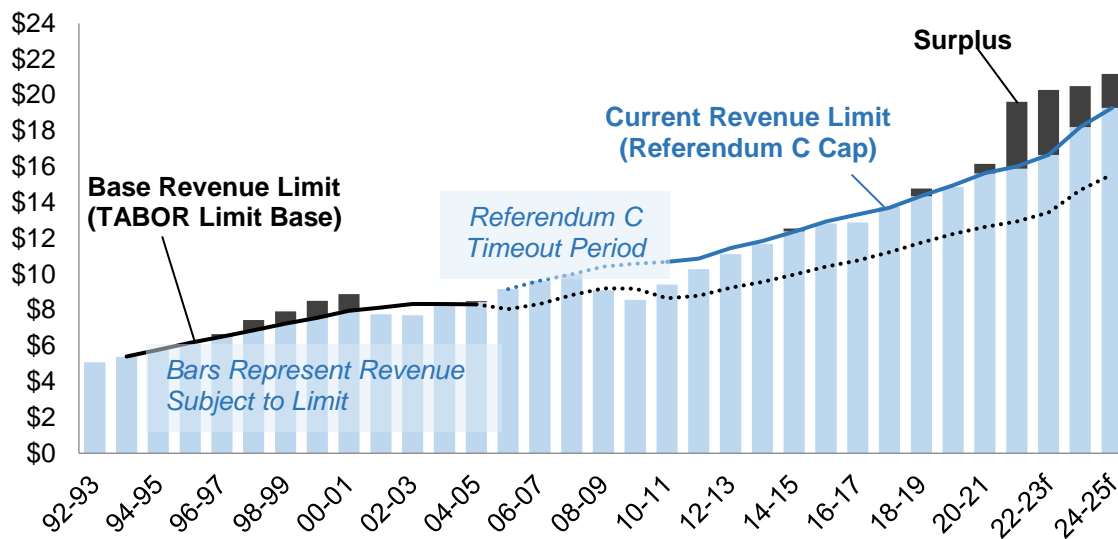
**Table 1**  
**State Examples of Exemptions from the TABOR Limit**

<b>Exemption</b>	<b>Example</b>	<b>Details</b>
Refunds to taxpayers	Refunds under TABOR (7)(d)	These amounts generally represent the amount by which revenue exceeds the limit, though other refunds could be issued.
Gifts	2015 gift from E-470 highway authority to upgrade temporary vehicle registration tags	“Grants” and “donations” are other terms for revenue that falls under this exemption.
Federal funds	Disbursements for Medicaid, education, transportation	By contrast, state disbursements of state revenue to local governments are not exempt from the local governments’ revenue limits, unless exempted by voters.
Collections for another government	State collection of local government sales tax	Some local government revenue is collected by the state Department of Revenue and excluded from most state budget computations.
Pension contributions by employees	State employee contributions to PERA	Non-enterprise revenue spent for employee salaries is subject to the limit, but employee salaries returned to the state as pension contributions are not counted a second time.
Pension earnings	PERA investment earnings	Pension earnings are excluded from most state budget computations.
Reserve transfers or expenditures	General Fund reserve	Reserved revenue is subject to the limit in the year when it is initially collected and saved, but not subject to the limit in the future year when it is expended.
Damage awards	Tobacco Master Settlement Agreement payments	This exemption includes court-ordered damage awards and may include revenue received from legal settlements.
Property sales	Lease-purchase agreements	Lease-purchase agreements, where a property is sold to an investor and leased back over a prearranged term, function as property sales.
Enterprise revenue	Public college tuition	This is the largest single exemption and is discussed at length in the “Enterprises” section.
Voter-approved revenue changes	Retail marijuana taxes, TRANs bonds	This exemption includes tax increases, fees, or bond sales approved by voters, as well as Referendum C.

***Inter-fund transfers.*** In general, transfers between state funds are exempt from the revenue limit, since these funds were counted against the limit when they were originally collected. Revenue that is collected from an exempted source and transferred to be spent for general government purposes is subject to the revenue limit. These kinds of transfers are usually made from cash funds containing enterprise revenue to other cash funds or the General Fund, and are sometimes called “transfers across TABOR district boundaries.”

**History.** Figure 1 presents a history of the state revenue limit and of state revenue subject thereto. Revenue collected in excess of the limit is required to be refunded to taxpayers in the fiscal year following its collection, as discussed later in this memorandum. As shown in Figure 1, Referendum C, a revenue change approved by voters in 2005, allowed the state to retain and spend revenue above the amount that otherwise would be permitted. Referendum C and its effects are discussed beginning on page 8 of this memorandum.

**Figure 1**  
**State Revenue Subject to the TABOR Limit**  
*Nominal Dollars in Billions*



Source: Office of the State Controller and Office of the State Auditor.

## Enterprises

The TABOR limit applies to revenue collected by districts. The constitution provides one exclusion from its definition of a district: enterprises. An enterprise is a self-supporting, government-owned business that receives revenue in return for the provision of a good or service. An enterprise may receive up to 10 percent of its annual revenue from state and local government sources. Otherwise, an enterprise must be financially independent of the state or any local government. In addition, an enterprise must have the authority to issue revenue bonds.<sup>1</sup>

Proposition 117, approved by voters in 2020, requires voter approval for a state enterprise to be created if its projected or actual revenue exceeds \$100 million in its first five fiscal years.<sup>2</sup> State law requires that an enterprise stop collecting fees or surcharges if the collection of additional fees or surcharges would cause it to exceed this limit.

<sup>1</sup>Section 24-77-102 (3), C.R.S.

<sup>2</sup>Section 24-77-108, C.R.S.

At the state level, policymakers have designated preexisting programs as enterprises and created new enterprises to handle additional state business functions. All current state enterprises carry an enterprise designation in statute. Enterprises collecting at least \$200 million in annual revenue include:

- state institutions of higher education, including public colleges, universities, the Colorado Community College System, and the Auraria Higher Education Center;<sup>3</sup>
- College Assist, the state higher education lender, and CollegeInvest, which administers higher education savings plans;<sup>4</sup>
- the state’s unemployment insurance program;<sup>5</sup>
- the Colorado Lottery;<sup>6</sup>
- the Division of Parks and Wildlife in the Department of Natural Resources, which administers the Colorado State Parks system;<sup>7</sup>
- the Colorado Healthcare Affordability and Sustainability Enterprise, which draws federal matching funds to reimburse hospitals for care for indigent patients and Medicaid expansion populations;<sup>8</sup> and
- The Health Insurance Affordability Enterprise in the Department of Regulatory Agencies, Division of Insurance, which funds activities related to the expansion of health insurance enrollment and affordability, including Colorado’s reinsurance program.<sup>9</sup>

**Qualification and disqualification.** Article X, Section 20 (7)(d) of the Colorado Constitution states that “[q]ualification or disqualification as an enterprise shall change district bases and future year limits.” Implementing statute requires that the revenue limit must be adjusted for qualification and disqualification of enterprises.<sup>10</sup>

When an existing state program *qualifies* as an enterprise, its revenue for the most recent prior fiscal year is subtracted from that year’s revenue limit before inflation and population adjustments are applied:

$$\left( \begin{array}{c} \text{prior year limit} \\ - \text{prior year qualifying enterprise revenue} \end{array} \right) \times \left( \begin{array}{c} \text{inflation} \\ + \text{population growth} \end{array} \right) = \text{current year limit}$$

When an existing state program is *disqualified* as an enterprise, its revenue for the current fiscal year is added to that year’s revenue limit after inflation and population adjustments are applied:

$$\left( \begin{array}{c} \text{prior year limit} \end{array} \right) \times \left( \begin{array}{c} \text{inflation} \\ + \text{population growth} \end{array} \right) + \left( \begin{array}{c} \text{current year disqualifying} \\ \text{enterprise revenue} \end{array} \right) = \text{current year limit}$$

<sup>3</sup>Section 23-5-101.7, C.R.S.

<sup>4</sup>Sections 23-3.1-103.5 and 23-3.1-205.5, C.R.S.

<sup>5</sup>Section 8-71-103 (2), C.R.S.

<sup>6</sup>Section 44-40-102, C.R.S.

<sup>7</sup>Section 33-9-105, C.R.S.

<sup>8</sup>Section 25.5-4-402.4 (3), C.R.S.

<sup>9</sup>Section 10-16-1204, C.R.S.

<sup>10</sup>Section 24-77-103 (1)(b), C.R.S.

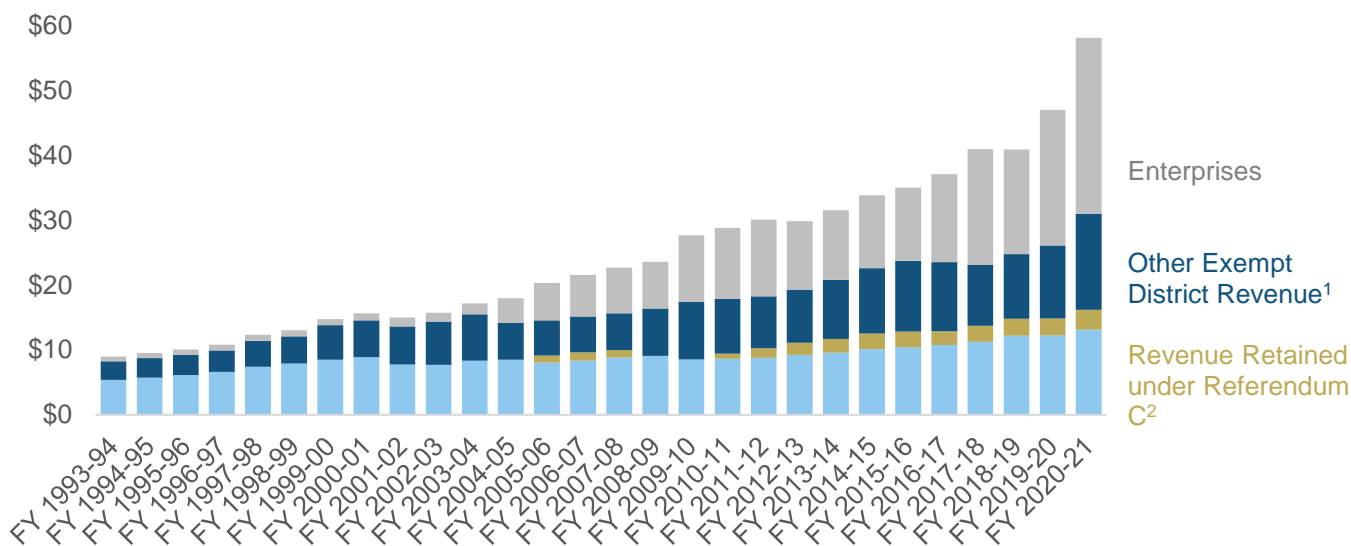
Adjustments for qualification or disqualification of an enterprise are made if an existing program is designated as an enterprise, or if an existing enterprise is reclassified to lose that designation. Additionally, adjustments are made in years when an enterprise fails to meet statutory criteria. This most often occurs when small institutions of higher education, such as Adams State University, Fort Lewis College, or Western State Colorado University, receive state grants, e.g. for capital construction projects, that exceed 10 percent of their revenue for the fiscal year.

Adjustments for qualification of an enterprise are made when a preexisting government program is designated as an enterprise. Adjustments are not made when a brand new program is created as an enterprise.

**History and trends.** The share of total state government revenue that is attributable to enterprises has increased over time. The proliferation of enterprises has increased user funding of government services, such that recipients of a service pay for that service. Designating state programs as enterprises also offers greater budget flexibility because enterprise revenue is not subject to the revenue limit.

Figure 2 presents a history of total state revenue, including revenue subject to the TABOR limit, revenue exempted under Referendum C, revenue otherwise exempt from the limit, and enterprise revenue through FY 2020-21, the most recent year for which data are available. The “enterprises” category in Figure 2 shows all revenue received by state enterprises, including revenue that would otherwise be exempt from the TABOR limit if the receiving program were not designated as an enterprise. As examples, federal funds received by higher education institutions and the Colorado Healthcare Affordability and Sustainability Enterprise are accounted as exempt enterprise revenue, despite also satisfying the exemption for federal funds.

**Figure 2**  
**State Revenue Subject to and Exempt from the Constitutional Limit**  
*Nominal Dollars in Billions*



Source: Office of the State Controller and Office of the State Auditor with Legislative Council Staff calculations.

<sup>1</sup>Includes federal funds, voter-approved revenue changes other than Referendum C, damage awards, gifts, property sales, and other sources. Excludes inter-fund transfers.

<sup>2</sup>Voter-approved revenue retained in excess of the base revenue limit and below the Referendum C cap.

<sup>3</sup>Includes all revenue not otherwise exempted, including excess revenue required to be refunded to taxpayers.

## Voter-Approved Revenue Changes

The TABOR limit is adjusted for “revenue changes approved by voters after 1991.”<sup>11</sup> These revenue changes most often take the form of taxes, fees, or bond proceeds that voters have approved as exceptions to the limit. In these cases, the relevant portion of the constitution or statute includes language indicating that revenue collected thereunder constitutes a voter-approved revenue change. Constitutional changes enacted after TABOR may also exempt associated revenue from TABOR entirely.

The largest state taxes or tax rate increases exempted by voters include:

- the additional cigarette and tobacco excise taxes authorized in 2004 and 2020, and the new nicotine products tax authorized in 2020;<sup>12</sup>
- the tax on proceeds from extended limited casino gaming authorized in 2008;<sup>13</sup> and
- the excise and special sales taxes on retail (non-medical) marijuana authorized in 2013.<sup>14</sup>

State bond proceeds exempted by voters include the Transportation Revenue Anticipation Notes (TRANS) authorized in 1999.<sup>15</sup>

**Amendment 23.** Voters approved Amendment 23 at the 2000 general election. Among other provisions, the amendment requires that income tax revenue equal to one-third of one percent of taxable income be transferred from the General Fund, where it would otherwise be deposited, to the State Education Fund.<sup>16</sup> While the amendment did not increase the tax rate, the amount it transfers is exempt from the revenue limit as a voter-approved revenue change.

**Referendum C.** Enacted in 2005, Referendum C is a permanent voter-approved revenue change. It operates differently from other state voter-approved revenue changes and is discussed at length in the next section.

### Local Voter-Approved Revenue Changes

Voters in local districts may also exempt revenue from their local government TABOR limits. Voters have authorized revenue changes at the county, municipal, school district, and special district levels. Voters in some local jurisdictions have chosen to exempt revenue from one or all of the local government’s major revenue sources, usually the property tax or sales tax. Others have chosen to exempt smaller revenue sources, such as revenue received from the state government, which would otherwise be subject to the local government’s TABOR limit.

Voters in some local jurisdictions have chosen to exempt all district revenue from their TABOR limit, allowing for the retention and spending of an unlimited amount of revenue.

<sup>11</sup>Colo. Const. art. X, § 20 (7)(a).

<sup>12</sup>Colo. Const. art. X, § 21 (4) and Sections 39-28-110.5, 39-28.5-108.5, and 39-28.6-112, C.R.S.

<sup>13</sup>Section 44-30-601 (1)(g)(II), C.R.S.

<sup>14</sup>Sections 39-28.8-204 and 39-28.8-307, C.R.S.

<sup>15</sup>Section 43-4-703 (1), C.R.S.

<sup>16</sup>Colo Const. art. IX, § 17 (4).

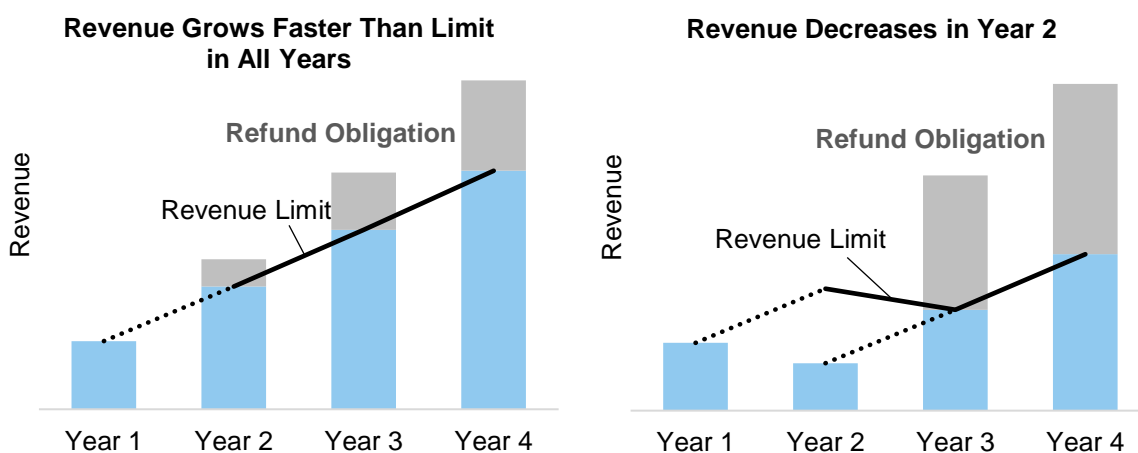
## The Ratchet-Down Effect and Referendum C

By default, the revenue limit for the state and local governments falls over time on a per capita, inflation-adjusted basis as a result of economic recessions. This section describes this effect and Referendum C, the state voter-approved revenue change authorized in response to it.

**The ratchet-down effect.** Because Article X, Section 20 (7), of the Colorado Constitution limits *growth* in fiscal year spending, each year's limit depends on the prior year's fiscal year spending amount. When district revenue increases more quickly than inflation plus population growth, the district is allowed to retain and spend a capped amount that grows by inflation plus population growth each year.

When district revenue decreases or increases less quickly than inflation plus population growth, the following year's revenue limit increases from a smaller base amount. This effect is illustrated in Figure 3. In the left panel, revenue increases more quickly than inflation plus population growth in years 2, 3, and 4, causing the revenue limit to increase at the maximum rate each year. In the right panel, revenue decreases in year 2. The revenue limit grows from this lower level in years 3 and 4. As a result, the district is required to refund more revenue in years 3 and 4 in the right-hand scenario than in the left-hand scenario, even though the total amount of revenue collected in these years is the same in both cases. The effect shown in the right-hand chart is sometimes called the "TABOR ratchet" or the "ratchet-down effect."

**Figure 3**  
**District Revenue Limit Under Different Revenue Growth Patterns**



**Referendum C.** Referendum C is a permanent state revenue change approved by voters in 2005. It is a statutory measure and does not amend the constitution.<sup>17</sup>

The effects of Referendum C are shown in Figure 1 on page 4. Beginning in FY 2005-06, the measure triggered a five-year "time-out period," during which the state was authorized to retain and spend all revenue collected. The dotted black line in Figure 1 shows the trajectory of the TABOR limit had Referendum C not been enacted. As shown, the state would have exceeded the limit in FY 2005-06,

<sup>17</sup>Section 24-77-103.6, C.R.S.



FY 2006-07, and FY 2007-08, as well as FY 2010-11 and all years since, triggering refund obligations for these years.

For FY 2010-11 and subsequent years, Referendum C set the revenue limit at an amount equal to the highest amount of revenue collected during the timeout period, adjusted for inflation and population growth thereafter. State revenue peaked in FY 2007-08, which became the base year for the Referendum C cap. Under Referendum C, this capped amount is adjusted by inflation and population growth each year irrespective of actual revenue collected, eliminating the ratchet-down effect. Figure 1 shows that the base revenue limit fell in FY 2009-10 and FY 2010-11 as a result of the ratchet-down effect; the Referendum C cap, however, increased during these years.

*Spending of retained revenue.* Revenue retained as a result of Referendum C is required to be spent for specific state purposes approved by voters in 2005.<sup>18</sup> The permitted purposes are:

- to fund health care;
- to fund education, including any capital construction projects related thereto;
- to fund retirement plans for firefighters and police officers, so long as the General Assembly determines that such funding is necessary; and
- to pay for strategic transportation projects included in the Department of Transportation's Strategic Transportation Project Investment Program.

Under current law, the General Assembly may appropriate the first \$125 million retained each year for any of the listed purposes.<sup>19</sup> Revenue retained in excess of \$125 million must be appropriated in equal thirds for health care, preschool through twelfth grade education, and higher education.<sup>20</sup> All appropriations of revenue retained under Referendum C are made from the General Fund Exempt Account, an account established in the General Fund for this purpose.

Legislative Council Staff is required to publish a report each year showing how retained revenue was spent. These reports are available [online](#).<sup>21</sup> Including preliminary figures for FY 2022-23, the state has retained \$33.75 billion over the 18 years in which Referendum C has been in effect. While Referendum C did not authorize new taxes or increase tax rates, the amount retained would have been refunded to taxpayers had Referendum C not passed, assuming voters would not have approved another revenue change and the state had not taken different fiscal actions to reduce revenue subject to the TABOR limit.

## Required Refunds to Taxpayers

TABOR requires that revenue collected in excess of the limit imposed be refunded to taxpayers. The language imposing this requirement appears at Article X, Section 20 (7)(d), of the Colorado Constitution, reproduced in the appendix. Excess revenue collected is sometimes called a "TABOR surplus."

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<sup>18</sup>Section 24-77-103.6 (2), C.R.S.

<sup>19</sup>Section 24-77-104.5 (1)(a), C.R.S.

<sup>20</sup>Section 24-77-104.5 (1)(b), C.R.S.

<sup>21</sup><https://leg.colorado.gov/publications/report-referendum-c-revenue-and-spending-fy-2005-06-through-fy-2022-23>

The state has collected a total of \$8.2 billion in excess revenue during 11 of the 30 years since the constitutional revenue limit was imposed in 1992, with \$3.7 billion excess in FY 2021-22 alone. The state issues required refunds in the fiscal year following the fiscal year in which excess revenue was collected. The surplus collected in the recently completed FY 2021-22 is being refunded in FY 2022-23. Table 2 shows the amounts of excess revenue collected and refunded in each of the eleven years.

**Table 2**  
**State Refund Obligations Under Colo. Constitution Art. X, § 20 (7)(d)**

<b>Excess Collected</b>	<b>Refund Required</b>	<b>Amount</b>
FY 1996-97	FY 1997-98	\$139.0 million
FY 1997-98	FY 1998-99	\$563.2 million
FY 1998-99	FY 1999-00	\$679.6 million
FY 1999-00	FY 2000-01	\$941.1 million
FY 2000-01	FY 2001-02	\$927.2 million
FY 2004-05	FY 2005-06	\$41.1 million
FY 2014-15	FY 2015-16	\$169.7 million
FY 2017-18	FY 2018-19	\$18.5 million
FY 2018-19	FY 2019-20	\$428.3 million
FY 2020-21	FY 2021-22	\$525.5 million
FY 2021-22	FY 2022-23	\$3,714.7 million*
<b>Total</b>		<b>\$8,147.9 million*</b>

Sources: Office of the State Controller and Office of the State Auditor.

\*Preliminary.

**Accounting.** The Office of the State Controller in the Department of Personnel and Administration is responsible for calculating the revenue limit and the amount of any excess by September 1 following completion of the fiscal year.<sup>22</sup> Excess revenue is restricted in the General Fund and cannot be spent via normal operating appropriations. The amount restricted is adjusted as refunds are paid and as accounting errors are discovered that increase or decrease the amount of the excess relative to the amount certified on September 1. The Office of the State Auditor in the legislative branch is responsible for auditing the revenue certification.<sup>23</sup> Accounting adjustments discovered after the audit of the revenue certification are recorded in the comprehensive annual financial report for the fiscal year in which the discovery occurs.

**Adjustments for over- and under-refunds.** As described in the following section, the state has most often refunded excess revenue via the income tax form. The amounts made available to individual taxpayers are determined based on estimates of the number of persons likely to file tax returns and of their incomes. Because these are estimates, the amounts actually refunded may be greater than or less than the amount of the refund obligation. To the extent that less money is refunded than required, the outstanding refund amount remains restricted in the General Fund and is refunded with the next

<sup>22</sup>Section 24-77-106.5 (1)(b), C.R.S.

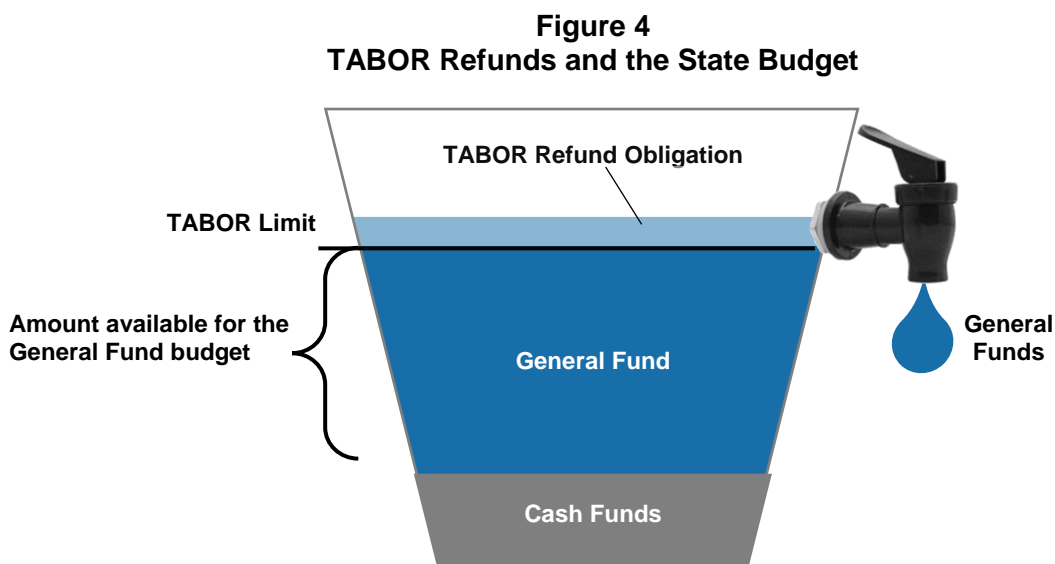
<sup>23</sup>Section 24-77-106.5 (2), C.R.S.

excess.<sup>24</sup> To the extent that more money is refunded than required, the amount of the overage is deducted from the next excess.<sup>25</sup>

**Impacts on the state budget.** The state budgetary impacts of changes in revenue subject to TABOR when there is a TABOR surplus situation depend on whether revenue increases or decreases, and whether these changes occur in cash funds, which are dedicated to specific programs, or the General Fund, which is used for discretionary operational spending. No matter whether revenue changes originate in the General Fund or cash funds, TABOR refunds are paid from the General Fund. The interaction between TABOR refunds, the General Fund and cash funds in the state budget is shown in Figure 4.

If General Fund revenue increases without voter approval to retain the additional revenue, the state is required to refund an amount equal to the revenue increase from the General Fund. There is no net impact on the amount of General Fund revenue available to retain and spend or save. In Figure 4, the top, light blue area above the TABOR limit line would increase. If cash fund revenue increases without voter approval to retain the additional revenue, the state is also required to refund an amount equal to the revenue increase from the General Fund. In other words, when cash fund revenue increases, the amount of General Fund revenue available for the budget decreases. The bottom, gray area in Figure 4 would increase, as would the light blue area above the TABOR limit line, decreasing the dark blue area below the TABOR limit line.

A reduction in General Fund revenue correspondingly reduces the TABOR refund requirement, causing no net impact on General Fund revenue available for the budget. A reduction in cash fund revenue increases the available General Fund revenue when the TABOR surplus exceeds the limit because it reduces the amount of the General Fund obligation for TABOR refunds.



<sup>24</sup>Section 24-77-103.8, C.R.S.

<sup>25</sup>Section 24-77-103.7 (4)(b), C.R.S.

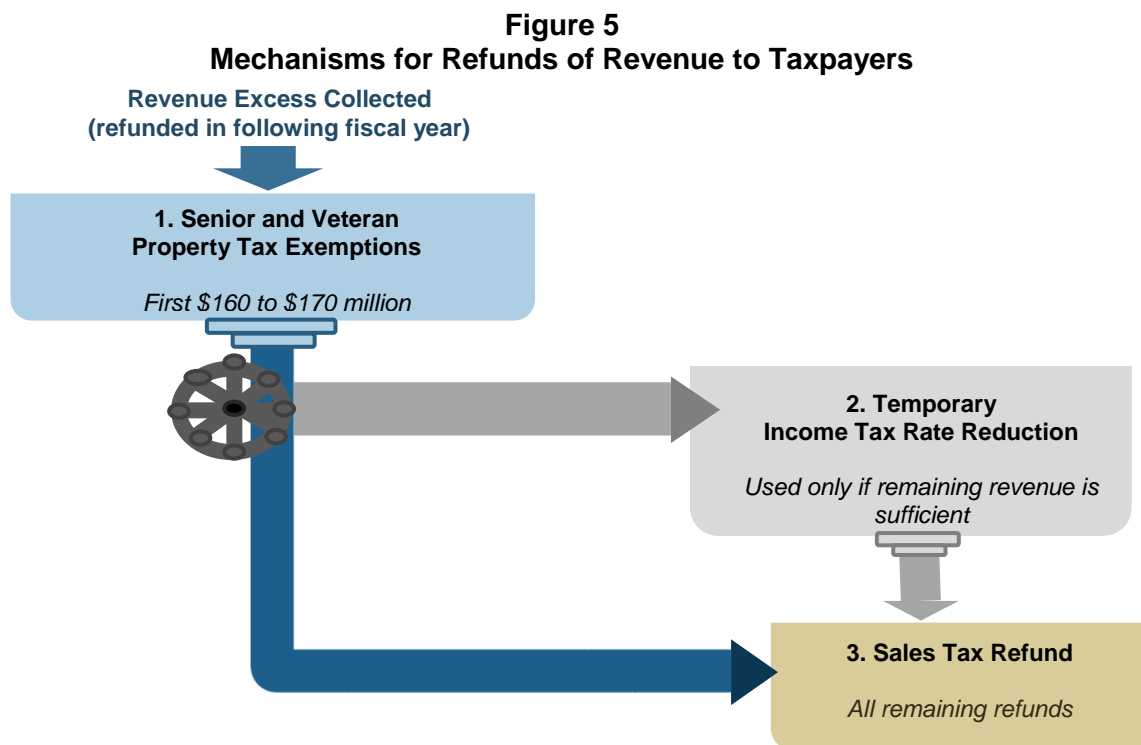
## Refund Mechanisms

Article X, Section 20 (1), of the Colorado Constitution allows that excess revenue may be refunded to taxpayers using “any reasonable method.” Since 1992, the General Assembly has created 23 mechanisms to refund excess revenue. Eighteen of these have been repealed and five remain in law. Repealed mechanisms most often took the form of income tax credits that became available only when the refund obligation was sufficient to pay for them. A [Legislative Council Staff memorandum](#) provides detailed information on past refund mechanisms and the years in which these mechanisms were used to refund revenue.<sup>26</sup>

**Current mechanisms.** Current law includes three ongoing and two temporary TABOR refund mechanisms. The three ongoing refund mechanisms include:

- the property tax exemption reimbursement mechanism;
- the temporary income tax rate reduction; and
- the six-tier sales tax refund mechanism.

Figure 5 shows the order in which these mechanisms are used, with the exception of FY 2022-23 and FY 2023-24, discussed further below. For information about the current outlook for refunds and the mechanisms expected to be used, see the “TABOR Outlook” section of the [current Legislative Council Staff economic and revenue forecast](#).<sup>27</sup>



<sup>26</sup>[http://leg.colorado.gov/sites/default/files/r21-97\\_history\\_of\\_tabor\\_refund\\_mechanisms.pdf](http://leg.colorado.gov/sites/default/files/r21-97_history_of_tabor_refund_mechanisms.pdf)

<sup>27</sup><http://leg.colorado.gov/EconomicForecasts>

*Property tax reimbursement mechanism.* Article X, Section 3.5, of the Colorado Constitution allows a property tax exemption for qualifying seniors and veterans with a disability. The constitutional provision by default exempts 50 percent of the first \$200,000 of the senior or veteran’s primary residence from taxation. The state is required to reimburse local governments from the state General Fund for their property tax loss resulting from the exemption.

Beginning in FY 2017-18, excess revenue is first refunded via reimbursements to local governments equal to the amount of property tax revenue they lose as a result of the property tax exemptions for seniors and veterans with a disability.<sup>28</sup> The amount refunded via this mechanism is the lesser of actual reimbursements or the total refund obligation.

In years when the state incurs a refund obligation less than the required reimbursement, only the portion of the reimbursement equal to the refund obligation is accounted as a TABOR refund. This portion is paid from General Fund revenue set aside in the year when the TABOR surplus was collected. The remaining portion of the reimbursement is financed from revenue collected in the fiscal year when the reimbursement is paid.

*Temporary income tax rate reduction.* The temporary income tax rate reduction refunds revenue via a temporary reduction in the state income tax rate from 4.55 percent to 4.50 percent for individual and corporate income taxpayers.<sup>29</sup> The income tax rate reduction is triggered if and only if the refund obligation exceeds the amount of the property tax reimbursement mechanism by at least the amount of the reduction in revenue expected to result from the reduction in the income tax rate, as shown in Figure 5.

When triggered, the income tax rate is reduced in the tax year following the fiscal year in which excess revenue is collected. For example, the reduction was triggered in FY 2020-21, and the income tax rate was reduced in tax year 2021. It will return to 4.55 percent in the next tax year in which the rate reduction is not triggered. When triggered, the rate reduction reduces the amount that taxpayers pay, but does not reduce the amount of state revenue accounted

as being collected via the income tax. Instead, the state controller accounts the tax reduction as fulfilling a portion of the state’s TABOR refund obligation, and credits the General Fund using an equivalent portion of the revenue excess set aside in the prior fiscal year.

#### Local Government TABOR Refunds

Local legislative bodies, such as boards of county commissioners, city councils, or town councils, are empowered to choose mechanisms to refund excess revenue collected at the local level. Most local governments that collect excess revenue refund the excess amount via temporary reductions in their general mill levy used to calculate property taxes.

The temporary income tax rate reduction was created in 2005 and was used as a refund mechanism in FY 2018-19, FY 2020-21, and FY 2021-22.

<sup>28</sup>Section 39-3-209, C.R.S.

<sup>29</sup>Section 39-22-627, C.R.S.

*Six-tier sales tax refund mechanism.* The six-tier sales tax refund mechanism<sup>30</sup> refunds any excess amount outstanding after the payment of refunds via the property tax reimbursement mechanism and, if triggered, the temporary income tax rate reduction. As a sales tax refund, it is not required to be added to federal taxable income, and, despite being called a sales tax refund, the state income tax form is used as the refund mechanism due to ease of administration.

The mechanism grants taxpayers a refund according to where their adjusted gross income falls among six adjusted gross income tiers. When the amount to be refunded via this mechanism is large enough to support at least \$15 per taxpayer, the Department of Revenue is required to distribute the amount among the tiers as it was distributed for the sales tax refund in tax year 1999. If the amount to be refunded is less than \$15 per taxpayer, an equal refund is provided to each taxpayer regardless of income.

Prior to the six-tier sales tax refund mechanism, the General Assembly had approved similar three-tier and four-tier sales tax refund mechanisms. House Bill 99-1001 created the current six-tier sales tax refund, which was first used to refund the FY 1998-99 surplus in tax year 1999.

*Direct payments.* Senate Bill 22-233 established an additional refund mechanism to refund a portion of the FY 2021-22 surplus for tax year 2022 through direct payments to taxpayers, after funding the property tax exemptions and the temporary income tax rate reduction and before funding the six-tier sales tax refund mechanism. Like the sales tax refund, direct payments are not treated as taxable income. Direct payments in 2022 are \$750 for single-filing taxpayers and \$1,500 for households filing jointly. This mechanism is estimated to refund \$2.7 billion in FY 2022-23.

*Other property tax refunds.* Senate Bill 22-238 establishes an additional refund mechanism to refund a portion of the FY 2022-23 surplus for tax year 2023 through reductions in the assessed valuations of residential and nonresidential property, which determine property taxes. A portion of local governments' foregone property tax revenue as a result of the bill is reimbursed by the state government. This mechanism is estimated to refund \$225 million in property tax year 2023.

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<sup>30</sup>Sections 39-22-2001, 39-22-2002, and 39-22-2003, C.R.S.

## **Appendix A. Selected Portions of Colo. Const. art. X, § 20**

**(1) General provisions.** [...]Subject to judicial review, districts may use any reasonable method for refunds under this section, including temporary tax credits or rate reductions. Refunds need not be proportional when prior payments are impractical to identify or return.

**(2) Term definitions.** (b) “District” means the state or any local government, excluding enterprises.

(d) “Enterprise” means a government-owned business authorized to issue its own revenue bonds and receiving under 10% of annual revenue in grants from all Colorado state and local governments combined.

(e) “Fiscal year spending” means all district expenditures or reserve increases except, as to both, those for refunds made in the current or next fiscal year or those from gifts, federal funds, collections for another government, pension contributions by employees and pension fund earnings, reserve transfers or expenditures, damage awards, or property sales.

**(7) Spending limits.** (a) The maximum annual percentage change in state fiscal year spending equals inflation plus the percentage change in state population in the prior calendar year, adjusted for revenue changes approved by voters after 1991. Population shall be determined by annual federal census estimates and such number shall be adjusted every decade to match the federal census.

(d) If revenue from sources not excluded from fiscal year spending exceeds these limits in dollars for that fiscal year, the excess shall be refunded in the next fiscal year unless voters approve a revenue change as an offset. Initial district bases are current fiscal year spending and 1991 property tax collected in 1992. Qualification or disqualification as an enterprise shall change district bases and future year limits. Future creation of district bonded debt shall increase, and retiring or refinancing district bonded debt shall lower, fiscal year spending and property tax revenue by the annual debt service so funded. Debt service changes, reductions, (1) and (3)(c) refunds, and voter-approved revenue changes are dollar amounts that are exceptions to, and not part of, any district base. Voter-approved revenue changes do not require a tax rate change.